IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. NO. 312 of 2001.
(Old No. 1025/1999)

National Insurance Company Ltd.,
25 M.G. Marg, Civil Lines, Allahabad,
through its Assistant Manager.

…….. Appellant.

Versus

1. Smt. Sangeeta widow of Late H. Rajesh Kumar Khatri.
2. Miss. Tanu Shree, D/o Late Rajesh Kumar Khatri (minor).
3. Smt. Bijula Devi, wife of Sri Bahoder Khatri.
4. Smt. Sher Bahadur Khatri, son of Late Dhanpat.
   All resident of Shonapuri Niwar, village and post Kacha Garhi, district Dehradun.

   …Respondents/claimants.
5. Sri Wali Mohammad son of Amdeen Musalman, R/o village Gihaman, tehsil Pukaram (Rajasthan).
6. Sri Babu Lal Parihar, Proprietor Babu Lal Anant Ram Ji Ka Bagechi, Sardarpur Jodhipur, at present R/o village Khame Ka Kuwa, Pal Road Jodhpur (Rajasthan).

   …… Respondents/O.Ps.

Mr. Lalit Belwal, learned counsel for the appellant.
Mr. R. Dobhal, Sri Anil Dabral and Sri A.K. Gautam, learned counsel for the respondents.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

JUDGMENT

Per Hon'ble J.C.S. Rawat, J.

1. This appeal has been preferred under section 173 of the Motor Vehicles Act against the judgment and award dated 05.08.1999 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Dehradun in Motor Accident Claim Case No.20 of 1997 Smt. Sangeeta and others Vs. Wali Mohammad and others, whereby the learned Tribunal has awarded a sum of Rs.6,80,000/- as compensation alongwith interest @ 12% per annum in favour of the claimants and against the appellant.

2. Brief facts giving rise to this appeal are that the deceased Havaldar Ramesh Kumar Khatri was posted near Jaisalmer Rajasthan (Pakistan Border) in the Indian Army as a Havaldar. On 07.06.1996 he was travelling in a truck No.RNQ 1131 while on duty. The driver on the said offending truck was rash and negligent while driving the vehicle. Due to his rash and negligent driving the truck overturned on the side of the road near Longewala Rajasthan, as a result of which the deceased and other persons travelling in the truck sustained injuries. The deceased was taken to the local hospital from where he was shifted to the Civil hospital, Jaisalmer and ultimately he was referred to Military hospital, Delhi where he died on 16.06.1996. It is alleged in the claim petition that the said truck was insured with the appellant and respondent No.5 and 6 were the driver and the owner respectively of the said offending vehicle. It was further alleged that the age of the deceased at the time of the incident was 32 years old and he was earning a sum of Rs.5000/- per month. The claimants had claimed a sum of Rs. 15,00,000/- as compensation.

3. The driver and the owner, respondent No.5 and 6 respectively did not put in appearance before the learned Tribunal.

4. The appellant, National Insurance Company filed its written statement and contested the claim petition mainly on the ground that the deceased was travelling as a gratuitous passenger in the goods carriage and the Company had insured only two persons, i.e. driver and the conductor and had not charged any extra premium for any extra liability, as such the Company was not liable to pay any compensation. It

was further pleaded that there had been a violation of the policy terms and conditions and the Company was not liable to pay any compensation to the claimants. It was further pleaded that the respondent No.5 was driving the truck without valid driving licence and, as such, the appellant was not liable to pay the compensation under the provisions of the Motor Vehicles Act. It was further alleged in the written statement that the amount of compensation was highly exaggerated and the appellant had prayed that the claim petition be dismissed with costs.

5. The learned Tribunal, after appraisal of the evidence had come to the conclusion that the owner of the offending truck had not committed any breach of the conditions of the insurance policy and the Insurance Company was held liable to make the payment of the compensation. The claim petition of the claimants was decreed with costs against the respondents No.5 and 6 and appellant for the payment of Rs. 6,80,000/- and it was further directed that the claimants would also be entitled to get the interest @ 12 per annum from the date of the petition till the date of the payment. The appellant Insurance Company was directed to pay the entire amount of compensation to the claimants with interest. Feeling aggrieved by the said judgment and award this appeal has been preferred before us.

6. We have heard Mr. Lalit Belwal, learned counsel for the appellant and Sri R.Dobhal, learned counsel for the claimants/respondents Nos.1 to 4 and Mr. Rajesh Joshi, learned counsel for the respondent No.6.

7- It was contended by Sri Lalit Belwal, learned counsel for the appellant that the deceased was travelling as a gratuitous passenger in goods carriage and the insurance company had insured only two persons, i.e. driver and the cleaner and had not charged any extra premium for extra liability, as such, the insurance company was not liable to pay the compensation. It was further contended that the offending vehicle was carrying the deceased as a gratuitous passenger against the conditions of the insurance policy. The appellant, insurance company had not charged only extra premium to cover the liability of other persons or passengers in addition to the driver and the cleaner. Thus, there was no contract of the appellant to cover the extra additional liability, the insurance company was not liable to pay any compensation for the death of the deceased. It was further contended that the learned Tribunal had erred in holding that there was no breach of policy conditions and also erred in holding the liability of the appellant, insurance company to pay the compensation to the claimants for the death of the deceased in the accident.

8. The learned counsel for the owner, respondent No.6 refuted the contentions and contended that the Tribunal had rightly held the Insurance company liable to pay the compensation.

9. It is not disputed that the offending vehicle was insured with the appellant, insurance company as a goods carriage used solely for the carriage of goods. The appellant had filed the insurance policy which clearly reveals that the offending vehicle was a goods carriage and a premium of Rs.1275/- was taken for the insurance of the vehicle as well

as for the insurance of the driver and the cleaner. The insurance policy further reveals that Rs.64/- had been taken as a service tax for the insurance. It is clearly revealed from the insurance policy filed by the appellant that the company had insured only two persons, i.e. driver and the cleaner and had not charged any extra premium for the extra liability. The accident took place on 07.06.1996.

10. Now the question that arises for consideration in this appeal is whether an insurance policy in respect of a goods vehicle would also cover gratuitous passenger in view of the amendment of 1994 to Section 147 of the Motor Vehicles Act, 1988. Section 147 of the Motor Vehicles Act, 1988 provides as under:

11. **"147. Requirements of policies and limits of liability.-**

(1) In order to comply with the requirements of thisChapter, a policy of insurance must be a policy which –

(a) ……

(b) insures the person or classes of persons specified in the policy to the extent specified in sub section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place.

(ii) ……"

12. By reason of the 1994 amendment what was added is “including owner of the goods or his authorized representative carried in the vehicle”. The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorized representative carried in the vehicle besides the third party. The intention of the Legislature, therefore, could not have been that the words ‘any person’ occurring in Section 147 would cover all persons who were travelling in goods carriage in any capacity whatsoever. If such was the intention there was no necessity to carry out amendment in as much as the expression ‘any person’ contained in sub section (1) of clause (b) of sub section (1) of Section 147 would have included the owner of the goods or his authorized representative besides the passengers who are gratuitous or otherwise. In the case of **New India Assurance Co. Ltd Vs Asha Rani- 2003(2) SCC page 223** it has been noticed that sub clause (1) of clause (b) of sub section (1) of Section 147 of Motor Vehicles Act, 1988 provides the liability which may be incurred by a owner of a vehicle in respect of death or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. The owner of a passenger carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods or his authorized representative and not any passenger carried in a goods vehicle whether for hire or reward or otherwise. The same view had been taken by the Apex Court in **National**

Insurance Co. Ltd. V. Challa Bharathamma, V (2004) SLT 825=I II (2004) ACC 292 (SC)=2004 ACJ 2094 (SC); Pramod Kumar Agarwal v. Mushtari Begum, V (2004) SLT 170=2004 ACJ 1903 (SC), and also in National Insurance Co. Ltd. v. V. Chinnamma, V (2004) SLT 500=III (2004) ACC 1 (SC)=2004 ACJ 1909 (SC).

13. It is admitted to the parties that the offending truck was the goods carriage and it was carrying the deceased as a passenger and the accident took place on 07.06.1996 after the enforcement of the amendment, as such, the insurance company can not be held liable to pay the compensation. The learned Tribunal had erred in holding that even if the deceased was a gratuitous passenger the insurance company was still liable to make the payment of compensation and the company could not escape its liability only on the ground that he was travelling in the goods truck gratuitously.

14. It was further contended by the learned counsel for the appellant that the claim petition was not contested by the owner and the driver of the vehicle before the Tribunal. They did not put their appearance inspite of the sufficient service before the Tribunal. They did not adduce any evidence that the driver of the said vehicle was having a valid licence on the date when the accident occurred. It was further contended that if the owner and the driver would have produced the driving licence before Tribunal the insurance company could have verified the said driving licence. The owner and the driver had not adduced any evidence to the effect that the driver of the offending truck had a valid driving licence at the time of the accident. It can be gathered that the driver of the offending vehicle had no valid licence to the

said vehicle. Where the driver of the vehicle did not hold any licence and the offending vehicle was allowed to be driven by the owner of the vehicle as such person, the insurer was entitled to succeed in its defence and to avoid the liability. In absence of any evidence we are of the considered view that the driver of the offending vehicle had no driving licence at the time of the accident. Thus, the insurance company could not be held liable to pay the compensation.

15. It was further contended by the learned counsel for the appellant, insurance company that the learned Tribunal had awarded a highly excessive and exorbitant amount of Rs.6,80,000/- with 12% per annum interest. It is not disputed that the claimants, owner and the driver had not preferred any appeal against the impugned award. It is admitted to the learned counsel for the appellant that he had not moved any application under section 170 of the Motor Vehicles Act to seek the permission to contest the petition before the Tribunal. The perusal of the record reveals that no application under section 170 of the Motor Vehicles Act had been filed by the appellant for seeking permission on the ground that there had been a collusion between the owner of the vehicle in question and the claimants. In view of the above, in absence of such permission, the appellant can not be allowed to challenge the finding of quantum of compensation awarded by the Tribunal before this Court.

16. In **National Insurance Company Ltd., Chandigarh Vs Nicolletta Rohtagi and others reported in 2002(7) S.C.C. p/456,** the Apex Court held that “even if no appeal is preferred under section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible.

for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."

17. In view of the above, the insurance company had no right to challenge the quantum of compensation awarded by the Tribunal.

18. In view of the foregoing discussion we are of the considered view that the appellant, insurance company had no liability to pay the compensation. The Tribunal had held that the accident occurred due to the rash and negligent driving of the driver of the offending truck in which the deceased sustained the injuries and ultimately he succumbed to his injuries on 16.06.1996. The learned Tribunal had also assessed the compensation to the tune of Rs. 6,80,000/-. The said finding had not been challenged by the owner and the finding had attained the finality. The liability for the payment of the entire amount of compensation lies on the owner of the vehicle, i.e. respondent No.6. The claim petition is liable to be decreed for the payment of the aforesaid amount against the owner of the vehicle. The claimants shall also get the interest @ 12% per annum from the date of the petition till the date of payment.

19. It is revealed from the perusal of the record that the appellant had deposited a sum of Rs. 25,000/- at the time of the filing of the appeal and thereafter the appellant had deposited an amount of fifty percent of the amount awarded by the Motor Accident Claims Tribunal in pursuance of the order dated 04.07.2005 before the Tribunal. The deceased was serving in the Army at the time of the accident. He was posted in the India Pakistan border. It is not

disputed that the death of the deceased occurred in the accident. It is also not disputed that the offending truck overturned on the road side and the deceased sustained the injuries and as a result of such injuries he died. It is not disputed that the said offending truck was insured with the appellant. Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of the vehicle against third party risks is a social welfare legislation to extend relief of compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object. It was observed in **National Insurance Company Vs Swarn Singh- 2004 (3) Supreme Court Cases 297** and **National Insurance Company Vs Baljit Kaur- 2004(2) SCC page 1** that where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2), the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub section (3) of Section 168 of the Act the insured fails to deposit the

amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

20. Considering the facts and circumstances of this case and considering the beneficial object it would be proper to direct the insurer to satisfy the award and recover the same from the owner. For the purpose of recovering the same from the owner the insurer shall not be required to file a suit. It may initiate a proceeding before the Tribunal concerned as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the same issue is decided against the owner and in favour of the insurer. The insurer would have the recoverable right from the owner of the aforesaid amount under the provisions of Motor Vehicles Act.

21. The appeal is disposed of with the above observations with no order as to costs.

J.C.S. Rawat, J. **Rajeev Gupta, C.J.**

Dated: August 5, 2006.

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